

§ 200.406

§ 200.406 Certification by the General Counsel.

For every Commission meeting closed pursuant to § 200.402(a) (1) through (10), the General Counsel of the Commission (or, in his or her absence, the attorney designated by General Counsel pursuant to § 200.21) shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§ 200.407 Transcripts, minutes, and other documents concerning closed Commission meetings.

(a) *Record of closed meetings.* Except as provided in § 200.407(b), the Commission's Secretary shall prepare a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting, or closed portion of a meeting.

(b) *Minutes of closed meetings.* In the case of a meeting, or portion of a meeting, closed to the public pursuant to § 200.402(a) (8), (9)(i), or (10), the Secretary may, in his or her discretion or at the direction of the Commission, prepare either the transcript or recording described in § 200.407(a), or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each participating Commission member on the question). All documents specifically considered by the Commission in connection with any action shall be identified in such minutes are maintained.

(c) *Retention of certificate and statement.* The Secretary shall retain a copy of every certification executed by the General Counsel pursuant to § 200.406, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) *Minute Record.* Nothing herein shall affect the provisions of §§ 200.13a and 200.40 requiring the Secretary to prepare and maintain a Minute Record

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reflecting the official actions of the Commission.

§ 200.408 Public access to transcripts and minutes of closed Commission meetings; record retention.

(a) *Public access to record.* Within twenty days (excluding Saturdays, Sundays, and legal holidays) of the receipt by the Commission's Freedom of Information Act Officer of a written request, or within such extended period as may be agreeable to the person making the request, the Secretary shall make available for inspection by any person in the Commission's Public Reference Room, the transcript, electronic recording, or minutes (as required by § 200.407 (a) or (b)) of the discussion of any item on the agenda, except for such item or items as the Freedom of Information Act Officer determines to involve matters which may be withheld under § 200.402 or otherwise. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication, as set forth in § 200.80e, and, if a transcript is prepared, the actual cost of such transcription.

(b) *Review of deletion from record.* Any person who has been notified that the Freedom of Information Act Officer has determined to withhold any transcript, recording, or minute, or portion thereof, which was the subject of a request for access pursuant to § 200.402(a), or any person who has not received a response to his or her own request within the 20 days specified in § 200.408(a), may appeal the adverse determination or failure to respond by applying for an order of the Commission determining and directing that the transcript, recording or minute, or deleted portion thereof, be made available. Such application shall be in writing and should be directed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. The applicant shall state such facts and cite such legal or other authorities as the applicant may consider appropriate. The Commission shall make a determination with respect to any appeal pursuant to this subsection within 20 days (excepting Saturdays, Sundays

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and legal public holidays) after the receipt of such appeal, or within such extended period as may be agreeable to the person making the request. The Commission may determine to withhold any record that is exempt from disclosure pursuant to §200.402(a), although it may disclose a record, even if exempt, if, in its discretion, it determines it to be appropriate to do so.

(c) *Retention of record.* The Commission, by its Secretary, shall retain a complete verbatim copy of the transcript, or a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 200.409 Administrative appeals.

(a) *Review of determination to open meeting.* Following any announcement stating that the Commission intends to open a meeting or a portion thereof, any person whose interests may be directly and substantially affected by the disposition of the matter to be discussed at such meeting may make a request, directed to the Commission's Secretary, that the meeting, or relevant portion thereof, be closed pursuant to §200.402(a) (5), (6), or (7). The Secretary shall circulate such a request to the members of the Commission, along with a supporting statement provided by the requestor setting forth the requestor's interest in the matter and the reasons why the requestor believes that the meeting (or portion thereof) should be closed, and the Commission, upon the request of any one of its members, shall vote by recorded vote on whether to close such meeting or portion.

(b) *Review of determination to close meeting.* Following any announcement that the Commission intends to close a meeting or a portion thereof, any person may make written or telegraphic request, directed to the Commission's Secretary, that the meeting or a portion thereof be open. Such a request shall set forth the requestor's interest in the matter and the reasons why the

requestor believes that the meeting (or a portion thereof) should be open to the public. The Secretary shall circulate such a request and supporting statement to the members of the Commission, and the Commission, upon the request of any one of its members, shall vote whether to open such a meeting or a portion thereof.

§ 200.410 Miscellaneous.

(a) *Unauthorized activities; maintenance of decorum.* Nothing in this subpart shall authorize any member of the public to be heard at, or otherwise participate in, any Commission meeting, or to photograph or record by videotape or similar device any Commission meeting or portion thereof. The Commission may exclude any person from attendance at any meeting whenever necessary to preserve decorum, or where appropriate or necessary for health or safety reasons, or where necessary to terminate behavior unauthorized by this paragraph (a). Any person desiring to sound-record an open Commission meeting shall notify the Commission's Secretary of his intention to do so at least 48 hours in advance of the meeting in question. Any person desiring to photograph or videotape the Commission's proceedings may apply to the Secretary for permission to do so at least 48 hours in advance of the meeting in question. The Commission's determination to permit photography or videotaping at any meeting is confined to its exclusive discretion, and will be granted only if such activities will not result in undue disruption of Commission proceedings.

(b) *Suspension of open meeting.* Subject to the satisfaction of any procedural requirements which may be required by this subpart, nothing in this subpart shall preclude the Commission from directing that the room be cleared of spectators, temporarily or permanently, whenever it appears that the discussion during an open Commission meeting is likely to involve any matter described in §200.402(a) (respecting closed meetings).

(c) *Access to Commission documents.* Except as expressly provided, nothing in this subpart shall authorize any person to obtain access to any document not otherwise available to the public or